



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

AS:DCP/JPM/JPL/GMM
F. #2017R01739

271 Cadman Plaza East
Brooklyn, New York 11201

May 15, 2019

By Hand and ECF

The Honorable Nicholas G. Garaufis
United States District Judge
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Michael L. Cohen
Criminal Docket No. 17-544 (NGG)

Dear Judge Garaufis:

The government respectfully submits this letter in connection with its February 22, 2019 letter (ECF Dkt. No. 39) notifying the Court of potential conflicts of interest arising from Ronald White, Esq.'s representation of the defendant Michael L. Cohen. As outlined in the defendant's March 15, 2019 letter to the court (ECF Dkt. No. 43), the parties have conferred and agreed that the conflicts identified in the government's letter may be waived by the defendant.

If the Court determines that the defendant can waive the potential conflicts of interest, the government proposes that the Court advise the defendant as follows and make the below inquiries consistent with the procedures set forth in United States v. Curcio, 680 F.2d 881 (2d Cir. 1982):

I am advised that your attorney Ronald White has previously represented you during the course of this investigation, and was present for and witnessed certain events that may be relevant to your prosecution. I am also advised that Mr. White made certain statements to the government that may be relevant to your prosecution. These each and together could lead to a conflict of interest. For example, if a witness to one of these events testifies, but you or Mr. White have a different memory of the events, Mr. White would not be able to testify (or to use his independent memory of the relevant conversations), and you may have to choose between forgoing presentation of your

version of the facts, or testifying and subjecting yourself to cross examination at trial.

Moreover, the government has said that you made certain statements that were false, and other statements concerning your culpability for certain crimes with which you are charged. If you intend to argue at trial that you made these statements or acted at your attorney's behest, you may have a harder time pressing that defense if you are still represented by the same attorney on whose advice you are claiming that you were relying at that time.

The government has also said that Mr. White made certain statements to the government concerning your culpability for some of the crimes with which you are charged and that you authorized him to make those statements. If you intend to argue that Mr. White did not make such statements, said something different to the government than what the government says, was not authorized by you to make those statements, or you wish pursue a defense where Mr. White's statements are put at issue, you again may have a more difficult time pressing that defense or be unable to call Mr. White as your own witness if you are still represented by him.

Furthermore, it is unlikely that Mr. White will want to pursue a trial strategy that relies on the assertion that he gave you advice or made statements that are being put in question and that may open him up to scrutiny or make him a witness. This could, for example, lead him to advise you to take certain steps, including to plead guilty for a crime, rather than present certain arguments which would involve his representation or make it possible that he would be called as a witness at trial.

There may be other issues, in addition to the ones that I've just described, that can arise in which your attorney's ability to do certain things may be affected by the fact that he was present for certain events at issue in the case and made statements which may be at issue in the case. No one can foresee every possible conflict of interest.

Do you have any questions about what I have just explained to you?

Have you consulted with Mr. White about these issues?

You have the right to be represented by an attorney who does not have any possible conflicts of interest in representing you at all stages of this case, including any plea negotiations. If you proceed with Mr. White, you will be giving up that right. Do you understand that?

You also have the right to consult with an independent attorney who can advise you about the possible conflicts of interest that might arise if you proceed with your attorney. Do you understand that?

I understand, however, that Mr. Schoeman is advising you about these possible conflicts, is that correct?

Have you discussed this matter with Mr. Schoeman?

Can you tell me in your own words what you understand the potential conflicts of interest to be?

You are not under any pressure to make a decision about this right now. You are entitled, if you wish, to a reasonable period of time to think about these matters, or to consult further with your lawyer or with another lawyer before you advise the Court what you wish to do.

Do you believe you have had sufficient time to discuss this matter with Mr. Schoeman and to make a decision about how you wish to proceed?

Do you wish to continue with Mr. White representing you?

The government respectfully requests that the Court provide the foregoing Curcio colloquy at the conference scheduled for May 15, 2019.

Respectfully submitted,

RICHARD P. DONOGHUE
United States Attorney

By: _____ /s/

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cc: All Counsel of Record (by ECF)